

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DIANA M. MAYFIELD and DEPARTMENT OF THE NAVY,
NAVAL HOME, Gulfport, Miss.

*Docket No. 97-1693; Submitted on the Record;
Issued March 15, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's request for a hearing made more than 30 days after the Office's decision.

On December 16, 1994 appellant, then a 39-year-old medical clerk, filed a notice of traumatic injury alleging that she fell out of a chair while in the performance of duty on that same date and injured her back.

In support, appellant submitted a December 16, 1994 report from Dr. Jare Barkley, a Board-certified surgeon. He indicated that appellant was tender across the lower lumbar spine. Dr. Barkley stated, however, that he did "... not believe the fall today added any significant problem."

On December 29, 1994 Dr. M.F. Longnecker, a Board-certified orthopedic surgeon, indicated that x-rays showed a bulging disc with narrowing at L5-S1. He stated that there was entrapment of the left S1 root. Dr. Longnecker checked "yes" to indicate that the condition was caused or aggravated by employment activity. He stated that appellant was scheduled for surgery on December 29, 1994 and that her disability status was undetermined.

On February 27, 1995 the Office requested additional information including a detailed, narrative medical report.

By decision dated April 13, 1995, the Office denied appellant's claim because fact of injury was not established. In an accompanying memorandum, the Office indicated that appellant failed to respond to its request for a detailed, narrative medical report and that Dr. Barkley's report negated a relationship between appellant's alleged injury and factors of her employment.

In a letter dated September 30, 1996, appellant requested a hearing.

By decision dated October 25, 1996, the Office exercised its discretion and denied appellant's request for a hearing because it was not made within 30 days of the April 13, 1995 decision denying compensation.

The Board's jurisdiction to consider and decide appeals from final decisions of the Office extends only to those final decisions issued within one year prior to the filing of the appeal.¹ As appellant filed her appeal on January 25, 1997, the only decision properly before the Board is the Office's October 25, 1996 decision denying appellant's request for a hearing.

The Board finds that the Office properly denied appellant's request for a hearing under section 8124 of the Federal Employees' Compensation Act.

Section 8124(b)(1) of the Act, concerning a claimant's entitlement to a hearing before an Office representative, provides in pertinent part: "Before review under section 8128(a) of this title, a claimant for compensation not satisfied with a decision of the Secretary ... is entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on his claim before a representative of the Secretary."² As section 8124(b)(1) is unequivocal in setting forth the time limitation for requesting a hearing, a claimant is not entitled to a hearing as a matter of right unless the request is made within the requisite 30 days.³

The Board has held that the Office, in its broad discretionary authority in the administration of the Act, has the power to hold hearings in certain circumstances where no legal provision was made for such hearings and that the Office must exercise this discretionary authority in deciding whether to grant a hearing.⁴ Specifically, the Board has held that the Office has the discretion to grant or deny a hearing request on a claim involving an injury sustained prior to the enactment of the 1966 amendments to the Act which provided the right to a hearing,⁵ when the request is made after the 30-day period for requesting a hearing,⁶ and when the request is for a second hearing on the same issue.⁷

In the present case, appellant's hearing request was made more than 30 days after the date of issuance of the Office's prior decision dated April 13, 1995 and, therefore, appellant was not entitled to a hearing as a matter of right. Appellant requested a hearing in a letter dated September 30, 1996 and received by the Office on October 7, 1996. Hence, the Office correctly stated that appellant was not entitled to a hearing as a matter of right because the request was not made within 30 days of the Office's April 13, 1995 decision.

¹ 20 C.F.R. §§ 501.2(c), 501.3(d)(2).

² 5 U.S.C. § 8124(b)(1).

³ *Ella M. Garner*, 36 ECAB 238, 241-42 (1984).

⁴ *Henry Moreno*, 39 ECAB 475, 482 (1988).

⁵ *Rudolph Bermann*, 26 ECAB 354, 360 (1975).

⁶ *Herbert C. Holley*, 33 ECAB 140, 142 (1981).

⁷ *John S. Henderson*, 34 ECAB 216, 219 (1982).

While the Office also has the discretionary power to grant a hearing when a claimant is not entitled to a hearing as a matter of right, the Office, in its October 25, 1996 decision, properly exercised its discretion by stating that it considered the matter in relation to the issue involved and had denied appellant's hearing request on the basis that the case could be resolved by submitting additional evidence to establish that her injury was causally related to factors of her employment. The Board has held that as the only limitation on the Office's authority is reasonableness, abuse of her discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deduction from established facts.⁸ In the present case, the evidence of record does not indicate the Office committed any act in connection with its denial of appellant's hearing request which could be found to be an abuse of discretion. For these reasons, the Office properly denied appellant's request for a hearing under section 8124 of the Act.

The decision of the Office of Workers' Compensation Programs dated October 25, 1996 is affirmed.

Dated, Washington, D.C.
March 15, 1999

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

⁸ *Daniel J. Perea*, 42 ECAB 214, 221 (1990).